



**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

Notice of Adoption of Amendments to Articles of the New York City Health Code

In compliance with section 1043(b) of the New York City Charter (“Charter”) and pursuant to the authority granted to the New York City Board of Health (“Board of Health”) by section 558 of the Charter, a notice of public hearing and opportunity to comment on proposed amendments to sections 11.27, 173.13 and 173.14 and to Articles 43, 45, 47, 48, 48-A, 49, 51, 81, 88, 89, 131, 141, 143, 161, 165, 167, 175 and 177 of the New York City Health Code (“Health Code”) was published in the City Record on March 31, 2025, and a public hearing was held on April 30, 2025. No testimony was provided at the hearing, and two written comments were submitted on the proposed rule. Following review and consideration of the comments, the Department made no changes to the proposed rule and presented for the Board’s adoption the rule as provided below. At its meeting on June 5th, 2025, the Board of Health adopted the following resolution.

Statement of Basis and Purpose

The New York City Department of Health and Mental Hygiene (“Department”) has the authority to modify the application of certain provisions of the Health Code in response to a request by an entity subject to such provisions under certain circumstances. Generally, those circumstances arise when the requestor demonstrates a practical difficulty complying with a particular requirement in a specific instance and the purpose of the Health Code provision can be satisfied without adherence to that requirement.

Many, though not all, articles of the Health Code contain provisions granting the Department the authority to modify the application of Health Code terms. These provisions are not consistent. For example, there is variation as to the showing that an entity requesting a modification must make, the ability of the Health Commissioner to designate others to make determinations concerning such requests, and whether a denial of a request can be appealed. The differing language is likely a result of inconsistent drafting over time, rather than due to an intention to adopt different approaches or analyses.

To eliminate these inconsistencies, the Board amends the provisions applicable to sections 11.27, 173.13 and 173.14 and to Articles 43, 45, 47, 48, 48-A, 49, 51, 81, 88, 89, 131, 141, 143, 161, 165, 167, 175 and 177 of the Health Code to include a consistent modification provision.

These amendments make uniform all the modification provisions throughout the Health Code. The new modification provision creates consistent language regarding the showing a requestor must make; permits the Health Commissioner or a designee to make modification determinations in all instances; and provides that the denial of a request for a modification is a final agency determination and is not subject to appeal. The new uniform modification provision reads as follows:

When the Department determines that the strict application of any provision of this Article presents practical difficulties, the Commissioner or their designee may, in a

specific instance, modify the application of such provision consistent with the general purpose of this Article and upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

Statutory Authority

The authority for these amendments is found in Sections 556, 558 and 1043 of the Charter. Section 556 of the Charter provides the Department with jurisdiction to protect and promote the health of all persons in the City of New York. Sections 558(b) and (c) of the Charter empower the Board to amend the Health Code and to include all matters to which the Department's authority extends. Section 1043 grants the Department rule-making authority.

Underlined language is new.

Language in [brackets] is to be deleted.

Ellipses (***) indicate unamended text.

RESOLVED, that subdivision (h) of section 11.27 of Article 11 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

(h) Modification by Department. When the Department determines that the strict application of any provision of this section presents [undue, unusual or unreasonable hardships] practical difficulties, the Commissioner [may,] or their designee may, in a specific instance [and in his or her discretion], modify the application of such provision consistent with the general purpose [and intent] of this section and upon such [conditions as in his or her opinion are] condition(s) the Department deems necessary to protect [the public] life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner will be deemed a final agency determination.

RESOLVED, that section 43.25 of Article 43 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 43.25 Modification [of Provisions] by Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose [and intent] of [these articles] this Article and upon such

[conditions as in the Commissioner's opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial [by the Commissioner] of a request for modification [may be appealed to the Board in the manner provided by 24 RCNY Health Code § 5.21] by the Commissioner will be deemed a final agency determination.

RESOLVED, that section 45.21 of Article 45 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 45.21 Modification [of Provisions] by Department.

When the Department determines that the strict application of any provision of this [article] Article or Articles 49 or 51 presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose [and intent of these articles] of this Article and upon such [conditions as in his opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial [by the Commissioner] of a request for modification by the Commissioner [may be appealed to the Board in the manner provided § 5.21] shall be deemed a final agency determination.

RESOLVED, that subdivision (a) of section 47.75 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

(a) *Modification [of Provisions] by Department.* When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose [and intent] of this [Code] Article and upon such [conditions as in his/her opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. [Unless a shorter duration is specified] Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department[, all modifications shall remain in effect for the remainder of the permit period in which they are issued and shall expire at the end of the permit period]. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 48.26 of Article 48 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 48.26 Modification [of Provisions] by Department

When the Department determines that the strict application of any provision of this Article presents [substantial] practical difficulties, [or unusual or unreasonable hardships,] the Commissioner [of the Department] or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose [and intent] of this Article and upon such [conditions as in his/her opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. [Unless a specific duration is specified] Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department[, all modifications shall remain in effect for the remainder of the permit period and shall expire at the end of the permit period]. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 48.27 of Article 48 of the New York City Health Code, relating to modification of Health Code requirements, as set forth in Title 24 of the Rules of the City of New York, is **REPEALED**.

RESOLVED, that section 48-A.23 of Article 48-A of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 48-A.23 Modification [of Provisions] by Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose [and intent] of this Article and upon such [conditions as in his opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial by the Commissioner of a request for modification [may be appealed to the Board in the manner provided by § 5.21] shall be deemed a final agency determination.

RESOLVED, that section 81.55 of Article 81 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 81.55 Modification by [Commissioner] Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties [or unusual hardships], the Commissioner or their designee may, in a specific instance, [may] modify the application of such provision consistent with the general purpose of this Article and upon such [conditions as in his or her opinion are] conditions(s) the Department deems necessary to [provide for clean and sanitary food prepared, manufactured, processed or served in clean and sanitary establishments] protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result

in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 88.23 of Article 88 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York is amended to read as follows:

§ 88.23 Modification by Department.

[The Commissioner may modify requirements] When the Department determines that the strict application of any provision of this Article [when compliance] presents practical difficulties [or unusual or unreasonable hardships], the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose [and intent] of this Article and [this Code] upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 89.35 of Article 89 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 89.35 Modification by Department.

[The Commissioner may modify any requirements in] When the Department determines that the strict application of any provision of this Article [which present] presents practical difficulties [or unusual or unreasonable hardships], the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose [and intent] of this Article and [this Code] upon such [conditions as are] condition(s) the Department deems necessary to [assure the service of safe food and to] protect [the public] life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 131.19 of Article 131 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 131.19 Modification by [Commissioner]Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties [or unusual hardships], the Commissioner[,] or their designee may, in a specific instance, [may] modify the application of such provision consistent with the general purpose of this article and upon such [condition as, in their opinion are] condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in

enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 141.19 of Article 141 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 141.19 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties [or unusual hardships], the Commissioner[,] or their designee may, in a specific instance, [may] modify the application of such provision consistent with the general purpose of this Article and upon such [condition as, in his or her opinion are] condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial [by the Commissioner] of a request for modification [may be appealed to the Board in the manner provided pursuant to § 5.21 or successor rule] by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 143.17 of Article 143 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§143.17 Modification by [Commissioner] Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties [or unusual hardships], the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose of this [article] Article and upon such [conditions as, in his opinion, are] condition(s) the Department deems necessary to protect life and health [and the environment]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial [by the Commissioner] of a request for modification [may be appealed to the Board of Health in the manner provided by § 5.21] by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 161.25 of Article 161 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York is amended to read as follows:

§ 161.25 Modification by [the Commissioner] Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties [or unusual hardship], the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose of this [article] Article and upon such [conditions as, in his or her opinion are]

condition(s) the Department deems necessary to protect [public] life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 165.13 of Article 165 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 165.13 Modification by Department.

[The] When the Department [may approve on written application and after review, a modification when] determines that the strict application of any provision of this Article presents practical difficulties [or unusual hardships. The], the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose of this Article and upon such [conditions as, in his or her opinion, are] condition(s) the Department deems necessary to protect [the] life and health [or safety of bathers]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 167.11 of Article 167 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 167.11 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose of this Article and upon such [conditions as, in his or her opinion, are] condition(s) the Department deems necessary to protect [the] life and health [or safety of bathers]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that subdivision (h) of section 173.14 of Article 173 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

(h) *Modification by [the Commissioner] Department.* When the Department determines that the strict application of any provision of this section or § 173.13 of this Code presents practical difficulties [or unusual hardships], the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general [purposes] purpose of [this] these sections and upon such condition(s) the Department deems

necessary [. When granting a modification the Commissioner or designee may impose such conditions as are in the opinion of the Commissioner or designee to prevent lead contamination and] to protect [the] life and health [and safety of any persons likely to be exposed to lead as a consequence of such modification]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 175.06 of Article 175 of the New York City Health Code, relating to modifications and variance of Health Code requirements, as set forth in Title 24 of the Rules of the City of New York, is **REPEALED** and replaced with a new section 175.06 to read as follows:

§ 175.06 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties, the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose of this article and upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 177.09 of Article 177 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 177.09 [~~Modifications~~]Modification by Department.

[(a) An operator may submit a written request to the Department for a modification of any provision of this Article where there are unusual or substantial practical difficulties with the strict compliance with such provision, provided that the health and safety of the public will not be adversely affected.

(b) The] When the Department [may approve, on written application and after review, a request for modification when] determines that the strict application of any provision of this Article presents [unusual hardships. The] practical difficulties, the Commissioner[,] or their designee may, in a specific instance, [may] modify the application of such [provision(s)] provision consistent with the general purpose of this Article and upon such [conditions as, in his or her opinion, which are] condition(s) the Department deems necessary to protect [the] life and health [or safety of the public]. [An operator must meet all terms of an approved modification, including the effective date, the time period for which the modification is granted, the requirements being varied and any other conditions specified] Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the

Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.